of fact which cannot be made the subject of an appeal to this Court. However, part of that finding of fact was undoubtedly based on the conclusion reached by the learned Arbitrator that one of the Profit and Loss Accounts produced by the appellant expressly discounted or disapproved her statement that she had entered into the lease of the junk with the taikong on the basis of a share in the net profits on a 30 : 70% ratio. Mr. Hume has pointed out, however, — and it is, indeed, the case — that a more accurate calculation of that account (Enclosure C-1) does, in fact, show that the net profit received by the appellant, to wit, $287.54 (there is a miscalculation here of $1 in the amount itself) after payment for various expenses incurred which totalled $157.60, is, in fact, 30% of the gross profits of that particular venture, which amounted to $1,484. The account, therefore, so far from disproving the appellant's contention, tended to prove the truth of her story that at that time the agreement between her and the taikong was that she should receive 30% of the net profits of the trading venture.

Despite that fact, however, I am of the opinion that I would not be in any way justified in interfering with the learned Arbitrator's finding of fact, wrong though it may be — and I do not for a moment say that it is wrong — were it not for one other vital consideration. The learned Arbitrator expressly refers in his grounds of decision — and clearly places reliance on the fact — that :—

"Statements were made by 3 of the surviving members of the crew and they all said they were paid wages on monthly basis and not on a profit sharing basis."

Those statements are on the Arbitrator's file. They are statements made to a Labour Officer, Mr. Chin Min Sian. They are unsworn statements and the persons who made them were apparently not present at the inquiry held by the Commissioner under section 27 of the Ordinance, and certainly not called as witnesses at the hearing before the Arbitrator. Clearly they are statements which go to the whole root of the issue, namely, whether the crew were joint venturers working on a profit sharing basis or workmen paid on a monthly salary.

Section 35 of the Workmen's Compensation Ordinance enacts that a Commissioner and an Arbitrator shall have all the powers of summoning witnesses and examining such witnesses on oath or affirmation. Section 35(4) enacts a penalty for persons making false statements before a Commissioner or an Arbitrator.

Presumably the statements recorded by the Officer of the Labour Department were taken by him, upon instructions given to him, as a preliminary investigation to an inquiry to be held by the Commissioner. Section 27 enables such a preliminary investigation to be made by a public officer specifically appointed in writing by the Commissioner for that purpose, and the section applies the provisions of section 35 to that officer so appointed for the purpose of holding such a preliminary investigation. The fact remains, however, that those statements were not taken upon oath and that there is nothing to indicate that any opportunity was given to the opposite party at any time to cross-examine the persons making those statements.

The onus of proof of establishing that her husband was a workman and therefore entitled to compensation under the Ordinance was upon the respondent.

The fact that the Arbitrator acts upon and treats as evidence unsworn statements made in the absence of the parties and without an opportunity to cross-examine on such statements is a mistake in law. As I have already said, clearly the statements made by these three members of the crew that they were paid wages on a monthly basis and not on a profit sharing basis was a contention which went to the root of the issue.

I am, therefore, of the opinion that the right and proper course for me to take in this matter is to direct a fresh inquiry to be heard before another Arbitrator. I appreciate the fact that it may well be difficult for the respondent to get in touch with the former members of the crew for the purpose of obtaining their evidence at the fresh inquiry, but I hope that this is a difficulty which may be solved.

The appeal is accordingly allowed with costs and I direct that a new inquiry be taken before another Arbitrator.

Appeal allowed.

Solicitors : *Hogan, Adam & Allan; M. Abraham.*

SYED BIN KADER & ORS. v. REG.

[C. C. A. (Whyatt C.J., Chua and Wee Chong Jin JJ.) February 11, 1958]

[Singapore — Criminal Appeal No. 22 of 1957]

Court of Criminal Appeal — Function of, in examining trial Judge's Summing-up — Misstatement and inaccuracy in Summing-up.

Possession — Doctrine of recent possession — Evidence consistent with both theft and receiving.

It is not the function of the Court of Criminal Appeal to examine in microscopic detail the summing-up of a trial Judge to see whether there has been any inaccuracy in summarising all the evidence given at the trial.

It was open to the jury in this case to find the second appellant guilty of the principal charge of housebreaking in order to the committing of the offence of theft or guilty of the alternative charge of dishonestly retaining stolen property and the jury have by their verdict found the second appellant guilty of the principal charge.

It is not for the Court of Criminal Appeal to usurp the functions of the jury and to say that it would not have arrived at the same verdict as the jury on the evidence.

Case referred to :—

(1) *Seymour v. Regina* (1954) 1 W.L.R. 678; (1954) 1 All E.R. 1006; 38 Cr. App. R. 68.

COURT OF CRIMINAL APPEAL.

In this case the first appellant appealed against his conviction on a charge of dishonestly retaining stolen property, to wit, $11,000 cash belonging to the Bank of India of Robinson Road, Singapore, having reason to believe the same to be stolen property and the second and the third appellant, both appealed against their conviction on a charge of committing house-breaking by day by entering into the strong-room of the said Bank of India in order to the committing of the offence of theft and of cash and jewellery valued at $80,000. The appeals were all dismissed. One of the grounds of appeal of the second appellant was that the learned trial Judge in his summing-up misdirected the jury by erroneously stating that he denied having anything to do with the making of copy keys when in fact in his defence he admitted he had introduced another accused person to the locksmith who made one of the two copy keys to the strongroom door. His other ground of appeal was that there was no evidence upon which the jury could find him guilty of the offence. The evidence led by the prosecution against him was that in September 1956 he handed to this locksmith one of the genuine keys to the strongroom door and asked the locksmith to make a copy of this key and agreed to pay $20 for the making of the copy key saying that an European wanted this copy to be made and that the work had to be done quickly. The locksmith after measuring the genuine key handed it back to the second appellant. The locksmith eventually after 6 attempts made a satisfactory copy key and handed this copy to the other accused person who accompanied the second appellant in September 1956. The cash and jewellery kept in the strongroom of the Bank were stolen on the afternoon of March 30, 1957, entry into the strongroom being effected by copy keys. Then on April 5, 1957 i.e. 6 days after the theft, the second appellant went with a party of police to a place where he pointed to one of several wooden boxes which when lifted disclosed a suitcase in which were found part of the jewellery stolen from the Bank. Later the same day with a Police Inspector he went to another place from where he took a bundle which was found to contain $3,000 in cash in one dollar denomination separated into 30 bundles, and these bundles contained printed Bank of India slips. The next day he went with another Police Inspector to where he lived where from an almeirah he took a bundle wrapped in newspaper which when opened was found to contain $2,000 in cash in $10 denomination.

L. Rayner for the 2nd appellant.

J. B. Jeyaretnam (Crown Counsel) for the respondent.

The judgment of the Court was delivered by :

Wee Chong Jin J. (after dismissing the appeal of the first appellant dealt with the first ground of appeal of the second appellant and said) : — We are of the opinion that if the passage in the summing-up which is complained of is read in its true context there has been no misstatement by the learned trial Judge and we think this ground of appeal is utterly devoid of substance. In any event we desire to state, as have so often been stated by Courts exercising appellate jurisdiction, that it is not the function of this Court to examine in microscopic detail the summing-up of a trial Judge to see whether there has been any inaccuracy in summarising all the evidence given at the trial or, to accept as a good reason for quashing a conviction on the ground of misdirection an inaccuracy here or a misstatement there in a trial Judge's summing-up. When the Court is considering the effect of a summing-up the Court must give credit to the jury for having listened attentively and intelligently to the whole of the evidence and we are of the opinion that the passage complained of could have had no effect whatsoever on the jury which is detrimental to the second appellant.

[His Lordship then dealt with the second ground of appeal and continued :] We are of the opinion that the evidence that the second appellant arranged for the making of a copy of one of the two keys to the strongroom door, that the second appellant pointed to the Police the green suitcase where part of the stolen jewellery was found, that the second appellant pointed to the Police a bundle containing $3,000 in notes of one dollar denomination each which had printed Bank of India slips, taken cumulatively, was sufficient evidence on which the jury could come to the conclusion that the 2,000 in notes of 10 dollar denomination each were part of the cash stolen from the Bank of India on the 30th March 1957 and that the second appellant was in possession of these $2,000 in notes. It follows therefore in our opinion that on the doctrine of recent possession, which principle is

set out in the case of *Seymour v. Regina*[1], it was open to the jury to find the second appellant guilty of the principal charge of house-breaking in order to the committing of the offence of theft or guilty of the alternative charge of dishonestly retaining stolen property having reason to believe the same to be stolen property and the jury have by their verdict found the second appellant guilty of the principal charge. We sit as a Court of Appeal and it is not for us to usurp the functions of the jury and for us to say that we would not have arrived at the same verdict as the jury on the evidence. We are of the opinion therefore that the second appellant's appeal against his conviction should be dismissed.

[The rest of the judgment dealt with the appeal of the third appellant, which is not, for the purposes of this report reproduced].

Appeal dismissed

JAMALIAH v. CHIK & ANOR.

[R. C. J. (Rigby J.) September 12, 1957]

[Penang — Civil Revision No. 3 of 1957]

Contract — Breach of — Action for damages — Whether Magistrate has jurisdiction to entertain claim.

In this case the plaintiff allegedly engaged each of the defendants to execute certain work for her, to be completed within a specified period, in consideration of payment of agreed sums of money. In each case it was alleged that the work was unfinished despite her repeated requests to the defendants to complete such work. The plaintiff accordingly had to engage other persons to complete the work and she sought to recover from the defendants the estimated cost of completing the work. The Magistrate summarily dismissed each claim for want of jurisdiction.

Held: in their essence, the claims amounted to no more than simple actions for damages for breach of contract, the damages claimed being the estimated amount required to complete the contract breached, or, in the alternative, to actions for the recovery of moneys had and received for which consideraion had not been given. In either instance, and whichever way one looks at it, such actions came within the jurisdiction of the Magistrate.

REVISION IN CHAMBERS.

Rigby J. : — In these two actions the plaintiff allegedly engaged the defendant in each action to execute certain work for her, to be completed within a specified period, in consideration of payment of agreed sums of money. In each case the contract price was paid, save for a few dollars, and in each case it is alleged by the plaintiff that the work was unfinished despite her repeated requests to the defendants to complete such work. The plaintiff alleges that she was accordingly compelled to engage other persons to complete the work and she seeks to recover from the defendant in each case the estimated cost of completing the work which that defendant had undertaken upon payment of the agreed price so to complete. The learned Magistrate summarily dismissed each claim for want of jurisdiction on the ground that the plaintiff was asking, in terms, for a declaratory order for the specific performance of certain contracts made between her and the defendants and that certain pieces of work as contracted had not been completed by the defendants and that the uncompleted part of the work amounted to the value of the specific sums claimed by the plaintiff in her respective Statements of Claim. With great respect to the learned Magistrate I am unable to agree that he had no jurisdiction to entertain the claims. In their essence, they amount to no more than simple actions for damages for breach of contract, the damages claimed being the estimated amount required to complete the contract breached, or, in the alternative, to actions for the recovery of moneys had and received for which consideration has not been given. In either instance, and which ever way one looks at it, such actions would clearly come within the jurisdiction of the learned Magistrate. Under section 57 of the Courts Ordinance. I accordingly remit such actions to the learned Magistrate and direct that he try the issues between the parties.

Order accordingly.